

SERVICE DATE – JULY 7, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 269X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE  
EXEMPTION—IN NORFOLK, VA

Decided: June 30, 2006

By petition filed on March 28, 2006, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over an approximately 1.63-mile line of railroad between milepost VB-0.12 near Park Avenue and milepost VB-1.75 near Tidewater Junction in Norfolk, VA.<sup>1</sup> Notice of the filing was served and published in the Federal Register on April 17, 2006 (71 FR 19786). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

NSR states that, for the last several years, there has been only one rail user on the line, H. B. Hunter Company (Hunter), located near milepost VB-0.12 at Park Avenue. NSR asserts that Hunter received 12 carloads of corn syrup, an average of one carload per month, during the base year ending September 30, 2005, and that this traffic level is representative of the volume of traffic that NSR has moved over the line for the shipper for the past several years. NSR asserts that Hunter's business is unlikely to require any significant additional rail shipments in the future. NSR submits that the shipper has other transportation options available to it, including rail-motor transload service and direct truck service.

NSR states that there is no overhead traffic on the line. Petitioner adds that little potential exists for additional railroad traffic to develop along the line because of its length and location, a significant portion of which is adjacent to Norfolk State University. NSR submits that it operated the line at an avoidable loss from operations of \$8,381 during the base year, and that it anticipates an avoidable loss from operations of \$8,585 in the forecast year on revenues of only \$33,092. Finally, NSR alleges that it would incur a total avoidable loss from maintenance and operation of the line, including subsidization and return on value, of \$178,162 during the forecast year to continue operations, because, to remain in service, the line requires immediate

---

<sup>1</sup> NSR, the owner of the line, states that the poor condition of the line has forced it to seek discontinuance authority at this time. NSR also states that it originally planned to file for abandonment authority but, due to recent developments, it has changed its plans, at least for the near term.

rehabilitation from excepted track status to FRA Class 1 track status at a projected cost of \$165,100.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving NSR of the cost of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not necessary to protect shippers from the abuse of market power. Although service is being discontinued over the line, NSR states that it has discussed future transportation options with Hunter, including the possibility of its using rail-motor transload service or straight motor carrier service. We also note that Hunter has not objected to the proposed discontinuance. Nevertheless, to ensure that the shipper is informed of our action, we will require NSR to serve a copy of this decision on Hunter within 5 days of the service date of this decision and to certify to us that it has done so. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by NSR of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. NSR is directed to serve a copy of this decision on H. B. Hunter Company within 5 days after the service date of this decision and to certify to us that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by July 17, 2006, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by July 24, 2006. Petitions to reopen must be filed by August 1, 2006.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on August 6, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary